

## Puerto Rico 2005 Legislative Initiatives and Sample Language

### Notary Requirement

Current Puerto Rico election law requires that the FPCA and the ballot return envelope must be sworn to by a person authorized to administer oaths. Depending on the category of *UOCAVA* voter, the oath must be administered by a commissioned officer, the highest officer on board ship, an official in the school registrar's office, a notary public, or a consular officer. The notary requirement creates problems for individuals living overseas where such services are difficult and expensive, if not impossible, to obtain. Some voters have paid \$90 to obtain notary services. In many countries, there are no notaries in their system of jurisprudence. Also, some small military installations may have no commissioned officer assigned. We strongly recommend **removal of the notary requirement for all absentee balloting materials**. **Forty-nine** states and territories have eliminated the notary requirement on all election materials.

### Sample Language

*If a voter is residing outside the United States or is a member of the United States Uniformed Services, merchant marine, or a family member, and he or she is a qualified elector and is required to execute an affidavit or form for voter registration or an absentee ballot, he or she may subscribe to a self-administered oath, under penalty of perjury.*

### Late Registration Procedures

We recommend that **Puerto Rico allow persons recently separated from the Uniformed Services or overseas employment, and their family members, to be able to register late or be exempt from registration**. Many members of the Uniformed Services and overseas citizens go through a transition period when they first leave the Uniformed Services or overseas employment and may reside in Puerto Rico just prior to an election and this time frame does not meet Puerto Rico's normal residency requirements. Often, the date of discharge or termination of overseas employment and a commonwealth's registration requirement combine to disenfranchise a discharged military member or overseas citizen returning home after employment abroad. Special procedures to allow these persons to register and vote would solve this problem. **Twenty-six** states and territories currently allow such procedures.

### Sample Language

*An individual, or accompanying family member who has been discharged or separated from the Uniformed Services, the merchant marine, or from employment outside the territorial limits of the United States, too late to enable him or her to register by the regular commonwealth deadline for registration, shall be entitled to register for the purpose of voting at the next ensuing election after such discharge, separation, or termination of employment.*

### **State Special Write-In Absentee Ballot**

We also recommend that Puerto Rico provide a special write-in absentee ballot for all elections. The purpose of the special write-in absentee ballot is to **provide a method for voting by military and other persons overseas who, due to military contingencies or special circumstances such as those faced by submariners, Peace Corps volunteers, missionaries or others in remote areas, will be out of communication for extended periods of time and unable to receive the regular ballot from Puerto Rico in the normal time frame.** A voter could request a special write-in absentee ballot 90 days in advance and write in the names of the candidates or party preferences. The voter knows in advance that he or she will not be able to receive, vote, and return the regular ballot in time to be counted. **Twenty-seven** states now provide special write-in absentee ballots.

This special write-in absentee ballot should not be confused with the Federal Write-In Absentee Ballot (FWAB) that is prepositioned at Embassies and Consulates, military installations, overseas organizations and corporations. In comparison, the FWAB is generally only available to military members on active duty absent from their voting residence and overseas citizens who have already applied for a regular absentee ballot from the state. If the regular absentee ballot from Puerto Rico does not arrive in sufficient time for the voter to return the voted ballot and meet the deadline, these voters may obtain, vote, and return the FWAB to the local election official.

It is also important to note that a special write-in absentee ballot usually provides a “full” slate of offices to be voted upon including Federal, commonwealth, and local offices. On the other hand, the FWAB generally allows voting for Federal offices. There are presently **eleven** states that have expanded the use of the FWAB beyond Federal law. The 1995 revised FWAB was designed to accommodate its use beyond the general election and Federal offices only.

### **Sample Language**

*If the voter is a U.S. citizen residing outside the United States, or a member of the United States Uniformed Services, merchant marine, or a family member, and a qualified elector, he or she may request, not earlier than 180 days before an election, a special write-in absentee ballot. The voter must submit with the request a statement that provides that due to military or other contingencies that preclude normal mail delivery, the elector cannot vote an absentee ballot during the normal absentee voting period. Puerto Rico will make the ballot available "90 to 180" days before the election.*

### **Expand Use of Federal Write-In Absentee Ballot**

Currently the Federal Write-In Absentee Ballot (FWAB) may be used only in general elections for Federal offices only. This ballot is prepositioned worldwide at Embassies and Consulates, military installations and overseas organizations and corporations with American membership.

By **expanding its use to include special, primary and runoff elections for Federal offices**, citizens would not be disenfranchised because regular ballots are not received in a timely manner. Frequently, there is insufficient time between the call for a special election and the actual election and between primary and runoff elections. Allowing use of the FWAB in these elections would reduce the possible need for legal action when insufficient time exists for the ballot to be received, voted and returned to be counted. During past primaries, on an *ad hoc* basis, several states and jurisdictions allowed the FWAB to be used for offices other than Federal offices. **Eleven** states have legislatively expanded the use of the FWAB for other than Federal offices beyond the Federal law.

In addition, for those citizens that desire to vote in elections for Federal office only, the acceptance of the FWAB transmission envelope as **a request for registration simultaneously with the submission of the FWAB** would further simplify the process, improve on transit time and help ensure enfranchisement. It should be noted that the information requested on the FWAB transmission envelope is basically the same as the information requested from the voter on the Federal Post Card Application (FPCA). We recommend the FWAB transmission envelope and FWAB be accepted simultaneously as a registration form and ballot by the commonwealth for general election and Federal offices if:

- (1) the information submitted complied with the commonwealth's registration requirements;
- (2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted; and
- (3) the request is received by the appropriate commonwealth election official not less than 30 days before the election, or by the registration deadline established by the state, whichever is later.

The adoption of this initiative would save the commonwealth money and alleviate administrative responsibilities on the part of the local election official.

### **Sample Language**

- Expanded use of the FWAB:

*If the voter is residing outside the United States or a member of the United States Uniformed Services or a family member of a member of the Uniformed Services and a qualified elector, he or she may use the Federal Write-In Absentee Ballot in general, special, primary, and run-off elections for local, commonwealth and Federal offices.*

- Use of FWAB as a Combined Request for Registration and Ballot Submission:

*If the voter is residing outside the United States, or is a member of the United States Uniformed Services, or a family member of a member of the Uniformed Services, and a qualified elector,*

*he or she may use the Federal Write-In Absentee Ballot (FWAB) transmission envelope as a request for registration simultaneously with the submission of the FWAB if:*

- (1) the information submitted complies with the registration requirements of the commonwealth of Puerto Rico;*
- (2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted; and*
- (3) the request is received by the appropriate Puerto Rico election official not less than 30 days before the election, or by the registration deadline established by the state, whichever is later.*

### **Reference to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) in the Commonwealth Election Code**

In 1986, Congress updated and consolidated the provisions of the Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975 into the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). **Reference to UOCAVA in the commonwealth's election code** will help election officials and interested citizens find guidance to applicable Federal law and increase their familiarity with the statute and its application. **Thirty-seven** states and territories now reference the UOCAVA in their election code.

### **Sample Language**

This language is usually found under the chapter in the Election Code that makes reference to Federal elections:

*It is the intent and purpose of this Legislature that the provisions set forth in this chapter are designed to facilitate the Federal mandate of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff et. seq.).*

### **Electronic Transmission of Election Materials**

Since the 1990 general election, electronic transmission has proven to be a valuable alternative method for facilitating the enfranchisement of military persons and overseas citizens serving their country who may have otherwise been unable to vote. This initiative has helped ensure these citizens were not disenfranchised by allowing them to cast a ballot when they would not otherwise have been able to vote due to time and location constraints.

Throughout an election year cycle, various circumstances exist that require the need for this alternative procedure in order for citizens to vote. The basic concept of electronic transmission of election materials is to secure high-speed delivery of election materials to and from the voter and local election officials. Your support in developing the **acceptance of electronic transmission for all aspects of the process**, with proper controls, would cut the ballot transit

time at least in half. This would reduce the major obstacle to voting absentee and allow local election officials more administrative flexibility in preparing election materials.

Although Puerto Rico currently allows electronic transmission of the FPCA, including fax and email, we encourage the use of this alternative to include the electronic transmission of the FPCA for electronically sending the blank ballot to the voter, and accepting the voted ballot from the voter where circumstances would otherwise disenfranchise them. **Thirteen** states now allow electronic transmission of the FPCA for registering and requesting the absentee ballot, sending the blank ballot, and accepting the voted ballot.

### **Sample Language**

*An applicant who is a member of the United States Uniformed Services or the United States merchant marine, a family member, or is a qualified elector living outside the United States, may apply for registration and an absentee ballot by electronic transmission if otherwise qualified to apply for and vote by absentee ballot. The Commonwealth Elections Commission may send and receive absentee ballot applications and accept voted ballots from eligible electors via electronic transmission.*

### **Enfranchise Citizens Who Have Never Resided in the U.S.**

There are many U.S. citizens who have never resided in a state and under current law are not entitled to vote. These are usually first or second generation citizens who are subject to U.S. income tax and all other requirements of citizens. Except for the fact that they have never resided in a state, they would be eligible to vote in elections for Federal office. **Thirteen** states have passed legislation allowing these citizens to claim the legal residence of a parent. **We recommend these citizens be allowed to vote in elections for Federal offices where either parent is eligible to vote under UOCAVA.**

### **Sample Language**

*If a U.S. citizen outside the United States who has never lived in the Commonwealth of Puerto Rico has a parent who is a qualified elector, then that person is eligible to register and vote where his or her parent is a qualified elector.*

### **Emergency Authority for Chief Election Official**

During a period of a declared emergency or other situation where a short time-frame for ballot transmission is created, it is recommended that **Puerto Rico's Chief Election Official have the authority to designate alternate methods for handling absentee ballots** to ensure voters have the opportunity to exercise their right to vote. The Chief Election Official and the Federal Voting Assistance Program could establish expeditious methods for handling absentee ballots including electronic transmission. As an example, in light of the surge of Guard and Reserve forces being deployed, the Chief Election Official can temporarily allow electronics

transmission of voting materials for Active Duty Military. **Fifteen** states and territories have passed legislation giving the Chief Election Official authority to designate alternate methods of handling absentee ballots in emergency situation.

**Sample Language**

*The chief election official may exercise emergency powers over any election being held in a district in which either a natural disaster or extremely inclement weather has occurred. The chief election official may also exercise emergency powers during an armed conflict involving United States Armed Forces, or mobilization of those forces, including State National Guard and Reserve components of this commonwealth, the Chief Election Official may prescribe, by emergency orders or rules, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in the Commonwealth.*

*The Chief Election Official shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.*